IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.12.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL No.281 of 2004

and WAMP.No.454 of 2004

The Managing director
Tamil Nadu Film Development
Corporation Ltd.,
Dr. M.G.R. Film City
Taramani, Chennai 600 113. .. Appellant/
Respondent NO.4

vs.

1.R. Rajaraman
Managing Director
M/s. Protection and Control
Electric Systems Private Ltd.,
(PACE Systems)
Flat No.2-B, Block-II, 5th Street
Nandanam Extension, Chennai 600 035.

2.The Secretary to the Government
Public Works Department
Fort St. George, Chennai 600 009.

3.The Secretary to the Government
Highways Department
Fort St. George, Chennai 600 009.

4.The Managing Director
Tamil Nadu State Construction
Corporation Ltd.,
Jawaharlal Nehru Salai, Jai Nagar
Arumbakkam, Chennai 600 106.

5.The Secretary to Government
Information & Tourism Department
Secretariat, Chennai 600 009.

(R.5 was impleaded as per the
order of this court dt.10.08.2005
made in WAMP.No.2646/05) .. Respondents
(Petitioner and
Respondents 1 to 3)

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Writ Appeal is filed under Clause 15 of the Letters Patent against the order of the learned Judge Mr. Justice A.K. Rajan dated 08.10.2003 made in W.P.No.16155 of 2000.

W.P.No.16155 of 2000:- Petition under Article 226 of the Constitution of India prying to this Court to issue a writ of Mandamus directing the Respondents 3 and 4 to release the payments inclusive of the security deposit amounts all aggregating to the tune of Rs.16,56,847/- (Rupees sixteen lakhs Fifty six thousand eight hundred and forty seven only) to the petitioner towards the Works carried out along with interest computed at 18% per annum compounded monthly fell due as per the accepted terms of the Contract to the actual dates on which the payments are made.

For appellant .. Mr. R. Viduthalai
Advocate General for
for Mr. R. Balasubramanian

For respondents .. Mr. T.R. Rajagopalan
Senior Counsel
for Mr. T.K. Baskar for R.1

Mr. K. Ilango
Spl. Government Pleader for R.2,3&5

Mrs. Rita Chandrasekaran
for M/s. Aiyar & Dolia for R.4.

JUDGMENT

(Judgment of the Court was delivered by
P. Sathasivam,J.)

Aggrieved by the order of the learned single Judge dated 08.10.2003 made in W.P.No.16155 of 2000, the Tamil Nadu Film Development Corporation Ltd., Dr. M.G.R. Film City, Taramani, Chennai 600 113, has filed the above writ appeal.

2. The first respondent herein/writ petitioner in W.P.No.16155 of 2000, prayed for issuance of a Writ of Mandamus directing the respondents 3 and 4 therein, viz., the Tamil Nadu State Construction Corporation Ltd., Chennai 106 and the Tamil Nadu Film Development Corporation Ltd., Chennai 113 to release payments inclusive of the security deposit amounts all aggregating to a sum of Rs.16,56,847/- to the petitioner towards the works carried out, along with interest at 18% per annum.

3. For convenience, we shall refer the parties as arrayed in the writ petition.

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4. The case of the writ petitioner briefly stated is hereunder:

The Tamil Nadu State Construction Corporation Ltd. third respondent is owned by the State of Tamil Nadu, which was originally a part and parcel of Public Works Department and has since been transferred to be under the control of the Highways Department of the Government of Tamil Nadu, second respondent. Dr.M.G.R. Film City, Taramani, is owned and maintained by the Tamil Nadu Film Development Corporation Ltd. 4th respondent, and the Film City was entrusted to the third respondent - Tamil Nadu State Construction Corporation Ltd. The third respondent is the main contractor for the 4th respondent and appointed several sub-contractors, including the petitioner to carry out different works. The writ petitioner was awarded the work of carrying out a part of electrical installations in the Film City. The appointment of the petitioner as sub-contractor was made after calling for tender in accordance with the procedures laid down. The offer of the petitioner was accepted and work orders were issued by the third respondent on 22.12.1992, 08.02.1994, 02.07.1994. The terms of contract stipulate the duration and how the work is to be implemented. The contract also envisages quality of work and materials to be used. Though all the three orders had been executed to the fullest satisfaction of the third respondent, only part payments were made. The security deposit amount and the retention amount have also not been paid. The petitioner submitted a representation to the third respondent pointing out the delay in payment and in turn, the third respondent directed the 4th respondent to settle the bills. Even after repeated reminders and lapse of several months, the petitioner did not receive any favourable reply from the third respondent. The petitioner made a further representation on 18.11.1995 for release of Rs.16.57 lakhs, including the security deposit amount, followed by several representations to the respondents 1 to 4 on 15.10.1995, 31.10.1995, 15.11.1995, 14.12.1995 and 16.12.1995. In turn, the second respondent in their letter dated 22.12.1995 directed the third respondent to take immediate steps to settle the dues to the petitioner. In spite of the same, the amount has not been settled. Thereafter, the petitioner made representations on 29.03.1996, 11.05.1996, 13.05.1996 and 06.06.1996. The third respondent in their letter dated 07.07.1996, informed the petitioner that payments due to the third respondent from the 4th respondent were still not settled and on receipt of payment, the petitioner's outstanding would be settled. Even thereafter, the petitioner made several representations till the date of filing of the writ petition. In view of the attitude of the respondents, particularly, respondents 3 and 4, the petitioner has filed the above writ petition for appropriate direction for early settlement of the amounts due.

5. The Managing Director of the Tamil Nadu State Construction Corporation Ltd. third respondent has filed a counter affidavit, wherein it is stated that though the agreement was entered into between the petitioner Company and the third respondent, payment for all the works undertaken by the said Company was hitherto made only by 4th respondent and the third respondent did not make any payment to the petitioner Company.

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Further, the claim is barred by limitation. There are disputed questions of fact involved and the third respondent is not admitting the claim as made by the petitioner. Therefore, the petitioner cannot invoke Article 226 of the Constitution of India for the relief sought for. The third respondent received only sum of Rs.1.32 lakhs towards security deposit and EMD and not received the amount as alleged by the petitioner. In any event, it is only the 4th respondent, who is liable to make payment if any in accordance with law. The third respondent has only recommended for payment by the Tamil Nadu Film Development Corporation Ltd.

6. The Managing Director of the Tamil Nadu Film Development Corporation Ltd., 4th respondent has filed a counter affidavit, wherein it is stated that the Government of Tamil Nadu had decided, in their Order No.162 Information and Tourism Department dated 10.06.1982, to establish M.G.R. Film City in the premises of the Film and TV Industries of Tamil Nadu, Chennai with the objective of providing all infrastructural facilities as well as numerous shooting locations under one roof for producing cinema and video films. The Government had approved the project submitted by the Chief Engineer (Buildings), Public Works Department to the extent of 14,93 crores for carrying out the project in three phases. The execution of the entire Film City project was entrusted with the third respondent, i.e., Tamil Nadu State Construction Corporation Ltd., in G.O.Ms.No.162 Information and Tourism (FT 1) Department dated 10.06.1992, and the work was almost completed by the end of July, 1994. On the partial completion of the project, the 4th respondent found the execution of the work defective and not upto the standard, and that the materials used are all sub-standard, and the Government has incurred heavy loss due to the mis-application of funds allotted to the Film City project in the payments and purchases. Considering the dispute between the Tamil Nadu State Construction Corporation Ltd., and the Tamil Nadu Film Development Corporation Ltd. the Tamil Nadu Government in G.O.Ms.No.177 Information and Tourism Department dated 20.09.1996, appointed an Expert Committee, consisting of Dr. P. Sivalingam, former Vice-Chancellor of Anna University and Thiru S. Natarjan, retired Chief Engineer, Highways and Rural Works Department to evaluate the works done by the Tamil Nadu State Construction Corporation Ltd., in respect of civil, electrical and other allied works. The Committee submitted a evaluation report. It is learnt that Dr. P. Sivalingam Committee has found lot of defects in the execution of work. It also found that sub-standard materials were used and the claims under the different heads are excessive. The writ petition involves triable issues, such as limitation, disputed questions of facts, maintainability of the cause of action against 4th respondent and other allied issues. The Government had also entrusted the investigation with CB CID. Irrespective of all these factual details, since the 4th respondent is not a party to the contract, the writ petition is not maintainable.

7. On the above pleadings, the learned single Judge, after finding that there is no dispute with respect to the amounts payable and there is no restriction in exercising jurisdiction under Article

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226 of the Constitution of India, allowed the writ petition as prayed for. Questioning the same, the Tamil Nadu Film Development Corporation filed the above writ appeal.

8. Heard Mr. R. Viduthalai, learned Advocate General for the appellant and Mr. T.R. Rajaraman, learned senior counsel for the contesting first respondent.

9. The only point for consideration in this appeal is, whether the learned single Judge is justified in issuing mandamus for payment of the amount as claimed by the petitioner based on a contract dated 27.12.1993?

10. In view of narration of facts in the earlier paragraphs, there is no need to refer the same once again. It is also unnecessary for this Court to go into various clauses or terms of contract dated 27.12.1993. It is not in dispute that the petitioner is a Sub-contractor under the third respondent. Pursuant to the contract dated 27.12.1993, the petitioner was awarded the work of carrying out part of electrical installations in the Film City. It is the claim of the petitioner that on the direction of the third respondent, various amounts were paid by the 4th respondent (appellant herein). It is also their claim that they completed the work to the satisfaction of the third respondent and finally, sent a claim for Rs.16,56,847/-, inclusive of security deposit. It is also their grievance that though all the respondents by means of correspondence admitted their liability, they did not settle the same; hence, the petitioner approached this Court exercising jurisdiction under Article 226 of the Constitution of India.

11. Before proceeding further, it is our duty to point out that the learned Judge proceeded and granted relief as prayed for under the pretext that respondents 3 and 4 admitted their liability. The learned Judge proceeded on the basis that though the third respondent has filed a brief counter affidavit, the 4th respondent has not filed any counter affidavit expressing their stand, but, on the other hand, before us, learned Advocate General appearing for the appellant has brought to our notice the stand taken by the 4th respondent in their counter affidavit available in the typed set filed by the appellant, vide: pages 227 to 233. We have already referred to the objections and the stand taken by the 4th respondent in their counter affidavit. It is also relevant to mention that even in the writ petition, the petitioner has not furnished details regarding the works performed and how they arrived at the figure of Rs.16,56,847/-. It is true that the petitioner proceeded on the assumption that the respondents, particularly, respondents 3 and 4 had admitted their liability. On the other hand, both the respondents 3 and 4 raised an objection regarding maintainability of the writ petition, limitation and even with regard to quantum. In fact, the 4th respondent has highlighted that in view of several allegations regarding execution of the works, both civil and electrical, the Committee under the Chairmanship of Dr. P. Sivalingam was constituted and the said Committee after going through the matter in depth, submitted a report. It is also brought

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to our notice that the Government accepted the report of Dr. P. Sivalingam Committee and issued directions to the third respondent in their letter No.15708/FTI/95 dated 13.04.2005, to the effect that a sum of Rs.94 lakhs alone is payable by the Tamil Nadu Film Development Corporation Ltd. to the Tamil Nadu State Construction Corporation in connection with the execution of works in the Film City. In the same letter, the Government further directed that the said payment is the final settlement and it should be utilised for settling various amounts due to the Sub-contractors as per the works evaluated by Dr. P. Sivalingam Committee.

12. Now, with these back ground, let us consider, whether the learned Judge is justified in issuing direction for payment of the amount as claimed by the petitioner based on the Contract dated 27.12.1993. It is the specific stand of the 4th respondent (appellant herein) that in the light of the disputed questions of fact, particularly controversy regarding execution of the works, the learned single Judge is not justified in issuing direction by exercising jurisdiction under Article 226 of the Constitution of India. In support of the above contention, at the foremost, Mr. R. Viduthalai, learned Advocate General for the appellant relied on a decision of the Apex court in State of U.P. vs. Bridge & Roof Company (India) Ltd., [(1996) 6 SCC 22]. While considering a similar issue, the Hon'ble Supreme court has concluded,

> " 16. Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. This is a matter either for arbitration as provided by the contract or for the civil court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not, are all maters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting a particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer. "

13. In Binny Ltd., vs. V. Sadasivan [(2005) 6 SCC 657], the following conclusion in para 30 is relevant.

> " 30. A contract would not become statutory simply because it is for construction of a public

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utility and it has been awarded by a statutory body. But nevertheless it may be noticed that the Government or government authorities at all levels are increasingly employing contractual techniques to achieve their regulatory aims. It cannot be said that the exercise of those powers are free from the zone of judicial review and that there would be no limits to the exercise of such powers, but in normal circumstances, judicial review principles cannot be used to enforce contractual obligations. When that contractual power is being used for public purpose, it is certainly amenable to judicial review. The power must be used for lawful purposes and not unreasonably. "

14. In Orissa Agro Industries Corporation Ltd., vs. Bharati Industries [(2005) 12 SCC 725], after noticing the counter affidavit filed before the High Court, where they are disputing the claim of the writ petitioner, their Lordships have concluded,

" 8. In a catena of cases this Court has held that where the dispute revolves round questions of fact, the matter ought not to be entertained under Article 226 of the Constitution. [See State Bank of India v. State Bank of India Canteen Employees' Union and Chairman, Grid Corpn. Of Orissa Ltd. (GRIDCO) vs. Sukamani Das - (1999 (7) SCC 298).

9. In the instant case the High Court has itself observed that disputed questions of fact were involved and yet went on to give directions as if it was adjudicating the money claim in a suit. The course is clearly impermissible. (See G.M. Kisan Sahkari Chini Mills Ltd., vs. Satrughan Nishad (2003) 8 SCC 639 and Rourkela Shramik Sangh vs. Steel Authority of India Ltd. (2003) 4 SCC 317 : 2003 SCC (L&S) 456.

10. In National Highways Authority of India vs. Ganga Enterprises (2003) 7 SCC 410 it was observed by this Court that the question whether the writ petition was maintainable in a claim arising out of a breach of contract should be answered first by the High Court as it would go to the root of the matter. The writ petitioner had displayed ingenuity in its search for invalidating circumstances; but a writ petition is not an appropriate remedy for impeaching contractual obligations. (See Har Shankar v. Dy.Excise and Taxation Commissioner (1975) 1 SCC 737 : AIR 1975 SC 1121 and Divisional Forest Officer vs. Bishwanath Tea Co. Ltd. (1981) 3 SCC 238 : AIR 1981 SC 1368.

11. In Radhakrishna Agarwal v. State of Bihar (1977) 3 SCC 457 : AIR 1977 SC 1496 the types of cases in which breaches of alleged obligation by

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> the State or its agents can be set up were enumerated. The third category, indicated is where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract and in exercise of executive power of the State. The present case is covered by the said category. No writ order can be issued under Article 226 to compel the authorities to remedy a breach of contract; pure and simple. It is more so when factual disputes are involved. "

15. In Aluminium Industries Ltd. vs. Minerals & Metals Trading Corp. Of India Ltd. [(1997) II CTC 636], a Full Bench of this Court had an occasion to consider the power of judicial review in contractual matters. Speaking for the Full Bench, Shivaraj Patil,J. considering the issue in depth, after referring various decisions of the Apex Court concluded thus,

> " 48. Normally for specific performance of a contract or for recovery of damages claimed on breach of contract, even against State or Authority coming within the ambit of Article 12 of the Constitution, the parties have to approach ordinary civil courts. But there may be cases where facts and circumstances of the case warrant, and the situations demand exercise of power of judicial review available under Article 226 of the Constitution of India; may be such cases are extraordinary. The courts may exercise power of judicial review under Article 226 of the Constitution of India in the matter of enforcement of contractual obligations rarely and sparingly. ..... "

No doubt, in the same judgement, the Full Bench has reiterated that all actions of the State, or instrumentality of the State, or Authorities within the meaning of Article 12 of the Constitution of India, they have to act fairly, justly, and reasonably.

16. The analysis of the above decisions makes it clear that if the issue relates to disputed questions of fact, the relief being enforcement of a contractual obligation, the writ court cannot go into those factual details and give either specific finding or positive direction to the authority.

17. Mr. T.R. Rajagopalan, learned senior counsel for the writ petitioner/first respondent in this appeal heavily relied on the decision of the Apex Court in ABL International Ltd., vs. Export Credit Guarantee Corporation of India Ltd. [(2004) 3 SCC 553] and contended that even in contractual matters, this Court has power to interfere and issue appropriate direction to the Government exercising jurisdiction under Article 226 of the Constitution of

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India. No doubt, in the said decision Their Lordships have held that in appropriate cases, the writ court has jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar. Their Lordships have further held that writ petition involving serious disputed questions of facts which requires consideration of evidence, which is not on record will not normally be entertained under Article 226. However, their Lordships have explained that in a writ petition, if the facts require, oral evidence can be taken and if the disputed questions of fact pertaining to the interpretation/meaning of documents or part(s) thereof are involved, courts can very well go into the same and decide the objections if facts permit. Though as per the said decision the disputed questions of fact can also be gone into in a writ petition subject to fulfilling conditions stated therein, in view of the specific stand taken by the 4th respondent (appellant herein), particularly in view of controversy over the improper execution of the work, report of the Expert Committee, and ultimate direction by the Government accepting the report, we are of the view that the said decision is not helpful to the case on hand and we are unable to agree with the contention of the learned senior counsel for the contesting first respondent.

18. We have already mentioned in the earlier part of our order that the Government accepted the report of the Expert Committee and based on the same, issued appropriate directions to the Tamil Nadu State Construction Corporation Ltd., as well as to the Tamil Nadu Film Development Corporation. In this regard, it is useful to refer the recent Full Bench decision of this Court in P.P.M. Thangaiah Nadar Firm and 4 others vs. The Government of Tamil Nadu and 3 others [(2006) 4 Law Weekly 560], wherein (para 40) it is held that report of a Commission of Enquiry is not binding on the State which constitutes such Commission of Enquiry nor its findings are binding on those against whom any recommendation is made. They further held that the conclusions of the Commission of Enquiry are not admissible in a Court of law in criminal case or even in civil case and such conclusions are merely advisory in nature. Further, after referring the decisions of the Supreme Court, ultimately, the Full Bench has concluded thus,

> "44. Therefore, even if the report of a Commission of Inquiry is not legally binding and has got no evidentiary value, once such report, to the extend it is accepted by the State, obviously it would not be fair on the part of the State to contend that it is not bound by the findings of the Commission of Inquiry. In the language of the Supreme Court,
>
> > "Acceptance of the report of the Commission by the Government would only suggest that being bound by the rule of law and having duty to act fairly, it has endorsed to act upon it. "

It is clear that though the report of the Commission is not legally binding, once its findings are accepted by the Government, it is,

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but proper on the part of the Government to implement the same. As said earlier, in the case on hand, the Government accepted the report of the Expert Committee and also implemented its decision by issuing directions to respondents 3 and 4. All the above relevant aspects have not been adverted to by the learned single Judge who has committed an error in issuing direction for payment as claimed by the petitioner.

Under these circumstances, the order of the learned single Judge dated 08.10.2003 made in W.P.No.16155 of 2000, is set aside. Accordingly, the writ appeal is allowed. No costs. Consequently, connected WAMP., is closed. It is made clear that if the writ petitioner intends to approach any other forum, including the Civil Court, the entire time taken in prosecuting the writ petition and writ appeal shall be excluded for the purpose of limitation.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kh

To

1.The Secretary to the Government of Tamilnadu
Public Works Department
Fort St. George, Chennai 600 009.

2.The Secretary to the Government of Tamilnadu
Highways Department
Fort St. George, Chennai 600 009.

3.The Managing Director
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4.The Secretary to Government
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Secretariat, Chennai 600 009.

1 cc to M/s. Aiyar and Dolia, Advocate, Sr. 62359
1 cc to Mr.R. Balasubramanian, Advocate, sr. 62472
1 cc to Mr.T. K. Sheshadri, Advocate, sr. 62550

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